

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION No. 05-11454 RGS

_____)
JOSEPH H. KORAN, and KIMBERLY KORAN,)
Individually and on Behalf of ANA KORAN,)
JOSEPH KORAN, JR. and ERIK KORAN, Minors,)
Plaintiffs,)
v.)
)
ELIZABETH WEAVER and)
TOWN OF SHERBORN,)
Defendants.)
_____)

MOTION FOR LEAVE TO FILE
MOTION FOR SUMMARY JUDGMENT

Pursuant to Rule 6(b) of the Federal Rules of Civil Procedure, the defendant, Town of Sherborn [hereinafter “defendant”], hereby moves the Court for leave for the defendant to file its Motion for Summary Judgment.

As grounds for the Motion, the defendant states as follows:

- 1) The parties initially filed a Joint Statement agreeing that all dispositive motions were to be filed by December 29, 2006 (copy enclosed as Exhibit A).
- 2) The defendant attorney’s clerical staff thereafter entered the date for dispositive motions in this case as December 29, 2006.
- 3) At the initial Scheduling Conference of November 30, 2006, the Court instead set a deadline for dispositive motions of September 29, 2006 (entered onto the docket on December 7, 2005).
- 4) The defendant’s clerical staff did not enter this earlier September 29, 2006 deadline onto the diary of defense counsel.

- 5) All discovery deadlines and subsequent deadlines were recently extended by two months via the Court's August 18, 2006 grant of the defendant's Unopposed Motion to Amend Scheduling Order filed on August 17, 2006 (document number 14 on the docket).
- 6) The two month extension of all deadlines resulted in a deadline of November 29, 2006 for dispositive motions.
- 7) Due to a clerical error at the defendant attorney's office, the deadline for dispositive motions was never re-dialed to reflect the changes from the initial deadline of December 29, 2006 (defense counsel's affidavit attached as Exhibit B).
- 8) The defendant's counsel prepared the summary judgment motion well before November 29, 2006, but was awaiting responses from counsel of record for the requisite Local Rule 7.1 conference on the Motion (defense counsel's affidavit attached as Exhibit B).
- 9) Despite several oral requests in person and by telephone, and no less than twelve written requests, the plaintiff has still not produced several medical charts relevant to the case, and thus delayed the defendant's Motion for Summary Judgment in any event (all correspondence attached as Exhibit C).
- 10) The plaintiff initially agreed to the December 29, 2006 deadline, and will not be prejudiced by the filing of the motion just three weeks after the November 29, 2006 deadline.
- 11) The defendant missed the deadline due to excusable neglect, considering all of the above circumstances.
- 12) The defendant's Motion for Summary Judgment has merit, and the defendant will be greatly prejudiced if the defendant's Motion for Summary Judgment is not heard on the merits.

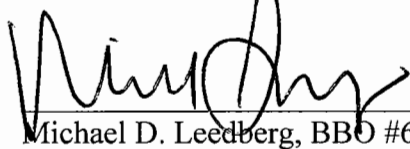
13) The interests of justice and judicial economy would be served by allowing the defendant's Motion for Summary Judgment to be heard on the merits.

WHEREFORE, pursuant to rule 6(b) of the Federal Rules of Civil Procedure, the defendant moves for leave of Court to file its Motion for Summary Judgment.

Respectfully submitted,

The Defendants,
TOWN OF SHERBORN,
By their attorneys,

PIERCE, DAVIS & FERRITANO, LLP

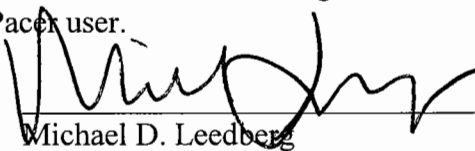


Michael D. Leedberg, BBO #660832
Ten Winthrop Square
Boston, MA 02110
(671) 350-0950

December 19, 2006

CERTIFICATE OF SERVICE

I, Michael D. Leedberg, attorney for the defendant in the above-entitled action, hereby certify that I served upon counsel of record a copy of the foregoing by electronically filing with the U.S. District Court, on this 19th day of December, 2006, and also by mailing copies to co-defendant Weaver's counsel of record at his address of record via regular mail. Weaver's counsel does not appear to be a registered PACER user.


Michael D. Leedberg

**MOTION FOR LEAVE TO FILE MOTION
FOR SUMMARY JUDGMENT
EXHIBIT A
Joint Statement
11/21/05**

PIERCE, DAVIS & PERRITANO, LLP

COUNSELLORS AT LAW

Joel F. Pierce
John J. Davis *
Judith A. Perritano
John J. Cloherty III *

TEN WINTHROP SQUARE
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James M. Dunn ♦
John Felice
David C. Hunter †
Robert S. Ludlum † ♦
Maureen L. Pomeroy
Daniel G. Skrip ♦
Darlene M. Tonucci ■

Of counsel:
Gerald Fabiano
Jeffrey M. Sankey*

* also admitted in RI
♦ also admitted in PA
† also admitted in NY
● also admitted in CT
■ also admitted in FL

November 21, 2005

VIA ELECTRONIC MAIL

Clerk of Court
United States District Court
District of Massachusetts
One Courthouse Way, Suite 2300
Boston, MA 02210

Re: Joseph H. Koran, et al vs. Elizabeth Weaver, et al
Civil Action No. 05-11454 RGS
Our File No.: 282-0403288

Dear Sir or Madam:

Pursuant to Fed.R.Civ.P. 26(f) and Local Rule 16.1(D), enclosed for filing please find the Joint Statement agreed to by all Parties in the above-referenced matter.

Thank you for your attention to this matter.

Sincerely,

PIERCE, DAVIS & PERRITANO, LLP



John J. Cloherty III
Darlene M. Tonucci

Enclosure

cc: Carmen L. Durso, Esq. (via e-mail)
Robert C. Gabler, Esq. (via e-mail)
Dragan A. Cetkovic, Esq. (via mail and facsimile)

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION No. 05-11454 RGS

<p>JOSEPH H. KORAN, and KIMBERLY KORAN, Individually and on Behalf of ANA KORAN, JOSEPH KORAN, JR. and ERIK KORAN, Minors,</p> <p style="text-align: right;">Plaintiffs,</p> <p>v.</p> <p>ELIZABETH WEAVER, and TOWN OF SHERBORN,</p> <p style="text-align: right;">Defendants.</p>

JOINT STATEMENT

Pursuant to Local Rule 16.1(D) and this Court's Notice of Scheduling Conference, the parties hereby report to the Court as follows:

I. AGENDA FOR SCHEDULING CONFERENCE

The parties suggest the following agenda of matters to be discussed at the conference:

- A. The proposed scheduling plan for discovery and motions;
- B. The positions of the parties regarding settlement.

II. COMPLIANCE WITH LOCAL RULE 16.1(D)

- A. Discovery will end on August 30, 2006;
- B. Plaintiffs will disclose their expert(s) by September 29, 2006;
- C. Defendants will disclose their expert(s) by October 30, 2006;
- D. All Expert Depositions shall be completed by November 29, 2006.
- E. Dispositive Motions:
 - 1. Dispositive Motions shall be filed by December 29, 2006;

2. Responses to dispositive motions will be filed by January 29, 2007;
3. Oral Argument on the motions will take place before February 28, 2007 or such other time as the Court deems appropriate.

F. Pretrial Conference:

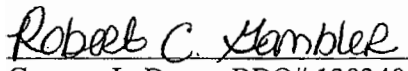
1. The parties request a pretrial conference after a decision on the dispositive motions;
2. The parties suggest March 30, 2007 with trial scheduled in the weeks following.

III. CERTIFICATIONS:

Certifications required by L.R. 16.1(D)(3) have been filed separately with the Court.

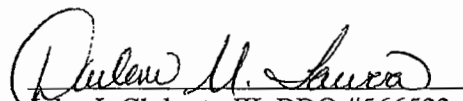
Respectfully submitted,

The Plaintiffs,
JOSEPH H. KORAN and KIMBERLY
KORAN, Individually and on Behalf of
ANA KORAN, JOSEPH KORAN, JR.
and ERIK KORAN, Minors,
By their attorneys,


Carmen L. Durso, BBO# 139340
Robert C. Gabler, BBO# 547227
100 Summer Street, Suite 3232
Boston, MA 02110-2104
(617) 728-9123

The Defendant,
TOWN OF SHERBORN,
By its attorneys,

PIERCE, DAVIS & PERRITANO, LLP


John J. Cloherty III, BBO #566522
Darlene M. Tonucci, BBO #659495
Ten Winthrop Square
Boston, MA 02110
(617) 350-0950

The Defendant,
ELIZABETH WEAVER,
By her attorneys,

Dragan A. Cetkovic 
Dragan A. Cetkovic, BBO #565828
Black, Cetkovic & Whitestone
200 Berkeley Street
Boston, MA 02116
(617) 236-1900

Dated: November 21, 2005

CERTIFICATE OF SERVICE

I, Darlene M. Tonucci, attorney for the defendant in the above-entitled action, hereby certify that I served upon counsel of record a copy of the foregoing by electronically filing with the U.S. District Court, and by mail to:

Dragan A. Cetkovic, Esq.
Black, Cetkovic & Whitestone
200 Berkeley Street
Boston, MA 02116

on this 21st day of November, 2005.

Darlene M. Tonucci
Darlene M. Tonucci

**MOTION FOR LEAVE TO FILE MOTION
FOR SUMMARY JUDGMENT
EXHIBIT B
Affidavit of Defense Counsel
Michael D. Leedberg, Esq.**

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION No. 05-11454 RGS

JOSEPH H. KORAN, and KIMBERLY KORAN,)
Individually and on Behalf of ANA KORAN,)
JOSEPH KORAN, JR. and ERIK KORAN, Minors,)
Plaintiffs,)
v.)
ELIZABETH WEAVER and)
TOWN OF SHERBORN,)
Defendants.)

AFFIDAVIT OF COUNSEL

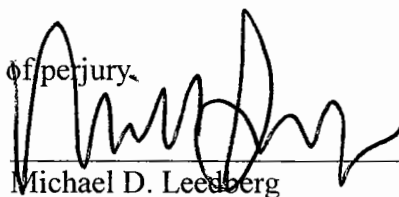
I, Michael D. Leedberg, Esq., do hereby depose and state:

1. I represent the Town of Sherborn in the above captioned matter.
2. The parties to this case originally agreed to December 29, 2006 as the deadline for dispositive motions in their Joint Statement presented to the Court during the November 30, 2005 Scheduling Conference.
3. The clerical staff at my office diaried this date of December 29, 2006 in my internal office diary as the date that dispositive motions must be filed in this case after the parties joined issue as to this deadline prior to the Scheduling Conference of November 30, 2005.
4. At the Scheduling Conference of November 30, 2005, attended by predecessor defense counsel, Darlene Tonucci, Esq., the Court ordered that all dispositive motions be filed by September 29, 2006.
5. The original deadline for dispositive motions of September 29, 2006 was extended by the Court two months, to November 29, 2005, by Order of the Court dated August 18, 2006

after the parties moved for additional time to complete discovery.

6. Due to a clerical error at my office, the original, agreed to deadline for dispositive motions of December 29, 2006 was never re-dialed to reflect the new deadline of November 29, 2006.
7. I substantially completed the drafting of the proposed Motion for Summary Judgment and all related filings during the first week of November, 2006.
8. I initiated good faith efforts to confer with plaintiff's counsel on the Motion for Summary Judgment, pursuant to Local Rule 7.1, by leaving a telephone message on November 14, 2006, fifteen days prior to the expiration of the deadline for dispositive motions, and received no reply.
9. Despite the expiration of the discovery deadline on October 30, 2006, the plaintiff has failed to produce numerous discoverable medical documents, and this failure, which is ongoing, prevented me from drafting the defendant's Motion for Summary Judgment at an even earlier date.
10. The error in dialing the new deadline caused me to miss the deadline for filing dispositive motions by three weeks.

Signed under the penalties and pains of perjury.



Michael D. Leeds

**MOTION FOR LEAVE TO FILE MOTION
FOR SUMMARY JUDGMENT
EXHIBIT C**

**Defendant's Request for Discovery
Compliance from Plaintiff**

**(7/25/06, 8/4/06, 8/18/06, 8/21/06, 8/24/06,
8/30/06, 9/5/06, 9/14/06, 9/26/06, 9/27/06,
11/14/06 & 12/12/06)**

PIERCE, DAVIS & PERRITANO, LLP

COUNSELLORS AT LAW

Joel F. Pierce
John J. Davis *
Judith A. Perritano
John J. Cloherty III *
Daniel G. Skrip ♦

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Michael D. Leedberg ●
Robert S. Ludlum †●
Julia C. Martinescu *
Terrence J. Pricher
David G. Schwartz
Adam Simms †

* also admitted in RI
♦ also admitted in PA
† also admitted in NY
● also admitted in CT

July 25, 2006

Carmen L. Durso, Esq.
100 Summer Street, Suite 3232
Boston, MA 02110

Re: Joseph H. Koran, et al. vs. Elizabeth Weaver, et al.
USDC of MA C.A. No. 05-11454 RGS
D/A: 2/6/03

Dear Attorney Durso:

It was a pleasure meeting with you and your client during the deposition on July 21, 2006.

As discussed at that deposition, it would appear that we are missing some medical and other records regarding your client's treatments and consultations. While we do have your client's authorization, the limited information provided by your client to date on these providers prevents us from independently pursuing the documentation. We hope to avoid unnecessary motion practice, with your client's continued cooperation in providing the details by supplementing/updating his discovery replies. Specifically, the deposition revealed that we are missing the following:

1. Records from his marriage counselor/therapist in New York;
2. Records from Mrs. Koran's marriage counselor/therapist in New York;
3. Records from Dr. Huckell;
4. Records from Dr. Gonijar of Frederick, Maryland;
5. Records from his pharmacies;
6. Records from the neurologists/neurosurgeons that your client consulted with in Maryland; and
7. Documents supporting a lost wage claim.

PIERCE, DAVIS & PERRITANO, LLP

July 25, 2006

Page 2 of 2

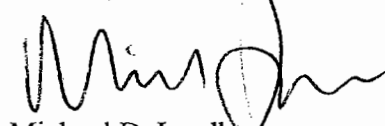
We also believe that we are close to obtaining Dr. Diaz's pre-incident chart. As discussed, we believe that Dr. DiSpenza is in possession of his chart. We will send you copies upon receipt, and any assistance you can provide in this regard would also be greatly appreciated. The good doctor is likely to be more responsive to a request from your client, than our office. Dr. DiSpenza is currently practicing out of North Medical Family Physicians, 7209 Buckley Road in Liverpool, New York 13088, telephone number 315-452-2829. The successor company to his former practice, Medbest, has indicated that Dr. DiSpenza took your client's records with him when his practice with Dr. Diaz dissolved in 2004.

Our review of the medical records that have been supplied through discovery also revealed that your client was referred to medical facilities by his attending physicians, from which we have no information and documentation. Specifically, on June 1, 2005, his present primary care physician, Dr. Clyde, referred him to "Psych Health Care Associates." Your client was also apparently seeing a Dr. Alberto Franco for hypertension, according to Dr. Tiso's October 7, 2003 note. Lastly, Dr. Tiso also indicated that your client was referred to a Dr. Jeffrey Winfield, as per his November 22, 2004 note. If indeed your client saw these physicians, we would appreciate copies of their documentation, or sufficient contact information so that we may independently pursue the records using your client's authorization.

We thank you for your continued cooperation and your prompt attention to this very important matter.

Very truly yours,

PIERCE, DAVIS & PERRITANO, LLP

A handwritten signature in black ink, appearing to read "Michael D. Leedberg", written over a faint circular stamp.

Michael D. Leedberg

MDL/rcm

cc: Dragan A. Cetkovic, Esq.
Daniel Nucci, MIA

PIERCE, DAVIS & PERRITANO, LLP

COUNSELLORS AT LAW

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Adam Simms †

* also admitted in RI
♦ also admitted in PA
† also admitted in NY
● also admitted in CT

August 4, 2006

Carmen L. Durso, Esq.
100 Summer Street, Suite 3232
Boston, MA 02110

Re: Joseph H. Koran, et al. vs. Elizabeth Weaver, et al.
USDC of MA C.A. No. 05-11454 RGS
D/A: 2/6/03

Dear Attorney Durso:

Please be advised that the EMTs, Scott Chistensen and Daniel Tolson, and the Town's rule 30(b)(6) designee, Sherborn Fire Chief Neil McPherson (formal designation to follow), have advised that due to scheduling conflicts, they are unable to appear for the depositions on August 16, 2006. They have proposed alternative dates for which all three are available, on August 24, 2006 and August 25, 2006. These dates work for me as well. Kindly advise if your office is willing and able to accommodate one of these dates.

This letter also confirms my conversation with Matthew Colletti of your office regarding the upcoming 30(b)(6) deposition of the Town, confirming that we would make the EMT's supervisor, Fire Chief Neil McPherson, available to testify on behalf of my client, and that you would then decide if any further depositions are warranted, and notice them accordingly.

Please also be advised that I have located your client's pre-incident chart for treatment with Dr. Diaz, as Dr. Dispenza's office has confirmed that they possess the materials. They are forwarding copies in the near future, and I will forward copies to all parties involved upon receipt. Kindly advise as to the other issues outlined in my letter dated July 26, 2006 at your earliest convenience.

PIERCE, DAVIS & PERRITANO, LLP

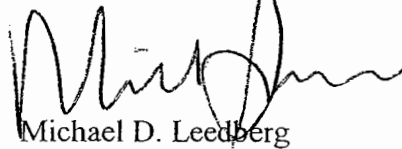
August 4, 2006

Page 2 of 2

We thank you for your continued cooperation and your prompt attention to this very important matter.

Very truly yours,

PIERCE, DAVIS & PERRITANO, LLP

A handwritten signature in black ink, appearing to read "Michael D. Leedberg", is written over the printed name.

Michael D. Leedberg

cc: Chief McPherson
Dragan A. Cetkovic, Esq.
Daniel Nucci, MILA

Encs.

PIERCE, DAVIS & PERRITANO, LLP

COUNSELLORS AT LAW

Joel F. Pierce
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August 18, 2006

Carmen L. Durso, Esq.
100 Summer Street, Suite 3232
Boston, MA 02110

Re: Joseph H. Koran, et al. vs. Elizabeth Weaver, et al.
USDC of MA C.A. No. 05-11454 RGS
D/A: 2/6/03

Dear Attorney Durso:

Enclosed please find my client's supplemental disclosures, as discussed today. On Tuesday I anticipate receiving additional documents relative to internal and state inspections of the Cot in question, and I will promptly supplement my client's 26.2(A) disclosures.

As discussed, I have advised my clients to be available to be deposed on August 25, 2006, at the previously scheduled times. We agree to push the depositions forward if Judge Stearns grants my pending motion.

Lastly, I attach copies of the pre-February 6, 2003 primary care records from Dr. Diaz and Dr. Samaan, as well as the pharmacy records obtained with your client's authorization. Note that there are significant outstanding issues on written discovery, as indicated in my July 26, 2006 and August 4, 2006 letters. Kindly address these issues with your client, to see if we can better identify and locate the missing records and unidentified medical providers for your clients, Kimberly and Joseph H. Koran.

We thank you for your continued cooperation and your prompt attention to this very important matter.

PIERCE, DAVIS & PERRITANO, LLP

August 18, 2006

Page 2 of 2

Very truly yours,

PIERCE, DAVIS & PERRITANO, LLP

A handwritten signature in black ink, appearing to read "Michael D. Leedberg", written over the printed name.

Michael D. Leedberg

cc: Dragan A. Cetkovic, Esq.
Daniel Nucci, MIA

Encs.

PIERCE, DAVIS & PERRITANO, LLP

COUNSELLORS AT LAW

Joel F. Pierce
John J. Davis *
Judith A. Perritano
John J. Cloherty III *
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* also admitted in RI
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August 21, 2006

Carmen L. Durso, Esq.
175 Federal St., suite 1425
Boston, MA 02110

Re: Joseph H. Koran, et al. vs. Elizabeth Weaver, et al.
USDC of MA C.A. No. 05-11454 RGS
D/A: 2/6/03

Dear Attorney Durso:

We are writing to update you as to our independent efforts to obtain copies of your client's medical records.

As of this date, despite exhaustive efforts, we are unable to locate the following providers/medical charts:

1. Records from his marriage counselor/therapist in New York;
2. Records from Mrs. Koran's marriage counselor/therapist in New York;
3. Records from "Psych Health Care Associates" (see Dr. Satterly's 6/1/05 office note);
4. Records from Dr. Jeffrey Winfield (see Dr. Tiso's 11/22/04 office note);
5. Records from Nurse Practitioner Margaret A. Donovan (see pharmacy records);
6. Records from Nurse Practitioner Linda Ehrich (see pharmacy records);
7. Records from Nurse Practitioner Jill C. Malinowski (see pharmacy records);
8. Records from Dr. Andrew Aiken (see pharmacy records);
9. Records from Dr. McClellan (see pharmacy records);
10. Records from Dr. Demory (see pharmacy records 1/19/06);
11. Records from Dr. Sherlekar (see pharmacy records-4/3/06);
12. Records from Dr. Schneider, the physician from Ohio that your client testified prescribed him Xanax; and

PIERCE, DAVIS & PERRITANO, LLP

August 21, 2006

Page 2 of 2

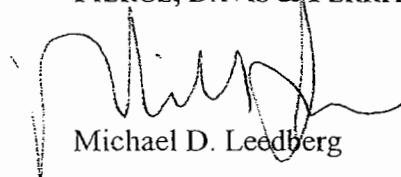
13. If your client is claiming lost wages or loss of earning capacity, his tax and wage records from 2000 forward in support of such a claim.

As we discussed on this date, Judge Stearns has granted the Motion to Amend the Scheduling Order. I understand we will aim for September for the depositions of the six Town employees. Since there are such a large number of employees, who are all working for the same emergency medical team, it would be quite a burden to have such a large block of them unavailable for duty. Similarly, it would be quite difficult to find two dates which they are all off at the same time. To this end, and with the need to get the depositions completed sooner rather than later, Chief McPherson has asked that the depositions be conducted at the firehouse, located at 22 N. Main Street, Sherborn. There are plenty of conference rooms available, and this would be best for both our scheduling constraints and public safety. Kindly advise if you would agree to hold the depositions in Sherborn.

We thank you for your continued cooperation and your prompt attention to this very important matter.

Very truly yours,

PIERCE, DAVIS & PERRITANO, LLP

A handwritten signature in black ink, appearing to read "Michael D. Leedberg", is written over a horizontal line.

Michael D. Leedberg

MDL/rcm

cc: Dragan A. Cetkovic, Esq.
Daniel Nucci, MIA

PIERCE, DAVIS & PERRITANO, LLP
COUNSELLORS AT LAW

Joel F. Pierce
John J. Davis *
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Of counsel:
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† also admitted in NY
● also admitted in CT

August 24, 2006

Carmen L. Durso, Esq.
175 Federal St., suite 1425
Boston, MA 02110

Re: Joseph H. Koran, et al. vs. Elizabeth Weaver, et al.
USDC of MA C.A. No. 05-11454 RGS
D/A: 2/6/03

Dear Attorney Durso:

We are writing to update you as to our independent efforts to obtain copies of your client's medical records, and to supplement our prior discovery replies.

Since our last letter, we have identified McClellan, Donovan, Sherlekar, Ehrich and Malinowski. We still require assistance with the remainder of the providers listed in my last correspondence, and must obtain these documents in the very near future in light of the discovery deadline. My client's ability to have these records reviewed by an expert will be prejudiced if we do not receive them very soon, and we are hoping to avoid burdening the court with otherwise unnecessary motion practice. Thank you for your prompt attention to this urgent matter.

We also confirm that all noticed depositions have been rescheduled for when Dragan returns from vacation on or after September 6, 2006.

Lastly, enclosed please find a packet of materials from my client relative to the cot in question (from 1996 forward), which include license applications, state inspections, internal inspection sheets and licensing data. I apologize for not sending these materials sooner, as I only recently discovered that they exist.

PIERCE, DAVIS & PERRITANO, LLP


August 24, 2006

Page 2 of 2

We thank you for your continued cooperation and your prompt attention to this very important matter.

Very truly yours,

PIERCE, DAVIS & PERRITANO, LLP



Michael D. Leedberg

cc: Dragan Ćetković, Esq.
Black, Ćetković & Whitestone
200 Berkeley St., 16th floor
Boston, MA 02116-5022

Daniel Nucci, MIA

PIERCE, DAVIS & PERRITANO, LLP

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Of counsel:
Gerald Fabiano
Jeffrey M. Sankey*

Kip J. Adams
Patrick D. Banfield
Mia Baron
John R. Felice
David C. Hunter †
Michael D. Leedberg ●
Robert S. Ludlum †●
Julia C. Martinescu *
Terrence J. Pricher
David G. Schwartz
Adam Simms †

August 30, 2006

* also admitted in RI
♦ also admitted in PA
† also admitted in NY
● also admitted in CT

Carmen L. Durso, Esq.
175 Federal St., suite 1425
Boston, MA 02110

Re: Joseph H. Koran, et al. vs. Elizabeth Weaver, et al.
USDC of MA C.A. No. 05-11454 RGS
D/A: 2/6/03

Dear Attorney Durso:


Please find copies of medical records from Dr. Hakim obtained using your client's authorization.

We have advised our client of the tentative date for Chief McPherson's and the two EMTs' depositions on September 19, 2006 at the Sherborn Fire Department. We'll await your formal re-notice.

We understand that your assistant is currently addressing the issues regarding the outstanding medical records. We appreciate your efforts in this regard.

Very truly yours,

PIERCE, DAVIS & PERRITANO, LLP



Michael D. Leedberg

PIERCE, DAVIS & PERRITANO, LLP

August 30, 2006

Page 2 of 2

cc: Dragan Ćetković, Esq.
Black, Ćetković & Whitestone
200 Berkeley St., 16th floor
Boston, MA 02116-5022

Daniel Nucci, MIIA

PIERCE, DAVIS & PERRITANO, LLP

COUNSELLORS AT LAW

Joel F. Pierce
John J. Davis *
Judith A. Perritano
John J. Cloherty III *
Daniel G. Skrip ♦

TEN WINTHROP SQUARE
BOSTON, MA 02110-1257

TELEPHONE (617) 350-0950

FACSIMILE (617) 350-7760

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Robert S. Ludlum †●
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Terrence J. Pricher
David G. Schwartz
Adam Simms †

* also admitted in RI
♦ also admitted in PA
† also admitted in NY
● also admitted in CT

September 5, 2006

Carmen L. Durso, Esq.
175 Federal St., suite 1425
Boston, MA 02110

Re: Joseph H. Koran, et al. vs. Elizabeth Weaver, et al.
USDC of MA C.A. No. 05-11454 RGS
D/A: 2/6/03

Dear Attorney Durso:

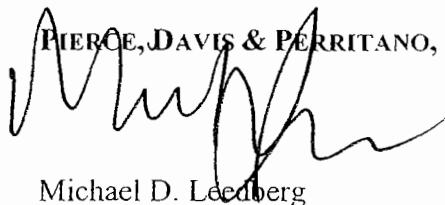
Please find copies of medical records from Frederick Primary Care Associates obtained using your client's authorization.

I have confirmed my clients availability for the September 19, 2006 depositions (the Chief and the two EMTs) at the Sherborn Fire Department. We'll await your formal re-notice.

We understand that your assistant is currently addressing the issues regarding the outstanding medical records. We appreciate your efforts in this regard.

Very truly yours,

PIERCE, DAVIS & PERRITANO, LLP



Michael D. Leedberg

PIERCE, DAVIS & PERRITANO, LLP

September 5, 2006

Page 2 of 2

cc: Dragan Ćetković, Esq.
Black, Ćetković & Whitestone
200 Berkeley St., 16th floor
Boston, MA 02116-5022

Daniel Nucci, MILA

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* also admitted in RI

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September 14, 2006

Carmen L. Durso, Esq.
175 Federal St., suite 1425
Boston, MA 02110

Re: Joseph H. Koran, et al. vs. Elizabeth Weaver, et al.
USDC of MA C.A. No. 05-11454 RGS
D/A: 2/6/03

Dear Carmen:

Please find copies of medical records from Dr. McMullen, obtained using your client's authorization.

I await your formal re-notice of the defendant depositions for next week, and the outstanding discovery materials outlined in my prior correspondence.

I note that we were not afforded an authorization from Mrs. Koran, and we have received none of the pertinent birthing and related records detailing her reported problems conceiving. Since she and Mr. Koran causally relate these issues to the accident, and the birthing/OB-GYN records prior to the accident are also relevant. These records all should have been disclosed in your client's mandatory disclosures months ago. We reiterate our need for copies. Please also include records from Dr. Grant E. Schmidt, 4830 E. Knightsbridge Blvd., suite B1, Columbus, OH 43214, telephone 614-451-2280.

PIERCE, DAVIS & PERRITANO, LLP

September 14, 2006

Page 2 of 2

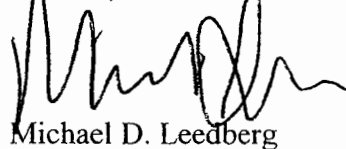
We certainly appreciate your efforts regarding the documentation that we were unable to obtain using your client's authorization. However, we are growing concerned that we will not have enough time to review the records, and/or have an expert review performed if necessary, even with the extended deadlines. We are not optimistic that Judge Stearns will grant another extension. To avoid prejudice to my client, I will need all outstanding discovery by October 7, 2006, or I will have no choice but to move to compel your client's production of the materials. We appreciate your understanding and continued assistance in this urgent matter.

Lastly, my principal has asked that we inquire about the possibility of entering into the Court's mediation program. I welcome your and Dragan's thoughts in this regard.

Thank you for your continued assistance.

Very truly yours,

PIERCE, DAVIS & PERRITANO, LLP

A handwritten signature in black ink, appearing to read "Michael D. Leedberg", is written over the firm name.

Michael D. Leedberg

cc: Dragan Ćetković, Esq.
Black, Ćetković & Whitestone
200 Berkeley St., 16th floor
Boston, MA 02116-5022

Daniel Nucci, MIIA

PIERCE, DAVIS & PERRITANO, LLP

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Adam Simms †

* also admitted in RI
♦ also admitted in PA
† also admitted in NY
• also admitted in CT

26
September 14, 2006

Carmen L. Durso, Esq.
175 Federal St., suite 1425
Boston, MA 02110

Re: Joseph H. Koran, et al. vs. Elizabeth Weaver, et al.
USDC of MA C.A. No. 05-11454 RGS
D/A: 2/6/03

Dear Carmen:

I write to confirm that the following additional records were produced to you in hand prior to the depositions of September 19, 2006:

- 1) A memo dated April 25, 2003 from Deputy Chief Ron Buckler to Chief Neil McPherson;
- 2) 13 pages of additional records relative to Ambulance Checklist inventories performed by Town personnel on February 2, 2003 (3 pages), March 7, 2003 (4); March 31, 2003 (3) and April 24, 2003 (3);
- 3) Single page Sherborn Fire & Rescue Response log for the dates of January 1, 2003 through March 1, 2003; and
- 4) Three pages of Training Classes attended by Town personnel between the dates of January 1, 2003 through March 1, 2003.

PIERCE, DAVIS & PERRITANO, LLP

September 26, 2006

Page 2 of 3

With a carbon copy of this letter, we are disclosing copies of these documents to counsel for Ms. Weaver as well.

You had requested that I summarize the discovery materials known to be outstanding from your clients. My records reveal they are as follows:

- 1) Records from Mr. Koran's counselor in New York;
- 2) Records from Mrs. Koran's counselor in New York;
- 3) Mrs. Koran's birthing and OB-GYN records (limited only to fertility and child-bearing issues), including but not limited to those from Dr. Grant Schmidt;
- 4) Documents supporting a lost wage/loss of earning capacity claim (if applicable), including but not limited to employee personnel files and tax returns from 2000-present;
- 5) Records from "Psych Health Care Associates" as referred to by Dr. Clyde in his June 1, 2005 note;
- 6) Records from a Dr. Jeffrey Winfield, as referenced by Dr. Tiso in his November 22, 2004 note;
- 7) Records from Dr. Andrew Aiken (from prescription records);
- 8) Records from Dr. Demory (from prescription records);
- 9) Records from Dr. Schneider, whom your client testified prescribed him Xanax;
- 10) Records from Dr. Alfaro-Franco (formerly of NY Heart Center, special authorization required and sent to your for signature on September 11, 2006);
- 11) Records from Dr. Connolly (formerly of NY Heart Center, special authorization required and sent to your for signature on September 11, 2006);
- 12) Dr. Adriana Hohl (see Dr. Coyne's note dated May 1, 2006); and
- 13) Dr. Dey in Rockville, MD (see Dr. Gonchigar's last office note).

Of course, this list is only what we know to be missing, and not meant to supplant your clients' ongoing obligations under Local Rules 26.2 and 35.1. Under those rules, these records should have been identified by your clients and disclosed long ago. As previously discussed, we will need these materials in short order, in light of the looming discovery deadline, the complex issues involved and our related need to have the records carefully reviewed.

Thank you for your continued assistance. Feel free to call me with any questions or concerns.

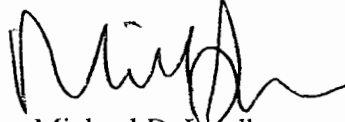
PIERCE, DAVIS & PERRITANO, LLP

September 26, 2006

Page 3 of 3

Very truly yours,

PIERCE, DAVIS & PERRITANO, LLP



Michael D. Leedberg

cc: Dragan Ćetković, Esq.
Black, Ćetković & Whitestone
200 Berkeley St., 16th floor
Boston, MA 02116-5022
(w/ encs.)

Daniel Nucci, MHA

PIERCE, DAVIS & PERRITANO, LLP

COUNSELLORS AT LAW

Joel F. Pierce
John J. Davis *
Judith A. Perritano
John J. Cloherty III *
Daniel G. Skrip *

TEN WINTHROP SQUARE
BOSTON, MA 02110-1257

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* also admitted in RI
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† also admitted in NY
● also admitted in CT

September 27, 2006

Carmen L. Durso, Esq.
175 Federal St., suite 1425
Boston, MA 02110

Re: Joseph H. Koran, et al. vs. Elizabeth Weaver, et al.
USDC of MA C.A. No. 05-11454 RGS
D/A: 2/6/03

Dear Carmen:

Please note that my last three-page correspondence, although dated September 14, 2006, was actually authored and sent on September 25, 2006. It is the letter outlining my supplemental production and your client's outstanding discovery. I apologize for the oversight.

Please also note that I have identified one of your client's psychological counselors from Ohio, David Miller, 7664 Slate Ridge Blvd., Reynoldsburg, OH 43068 (614)863-4125. I have also identified two pharmacies that he frequented in the area, Medic Drug in Cleveland (bought out by Walgreen's) telephone 216/944-0691 and Kroger's pharmacy, telephone (614)575-3741. Kindly produce these records as well.

Thank you for your continued assistance. Feel free to call me with any questions or concerns.

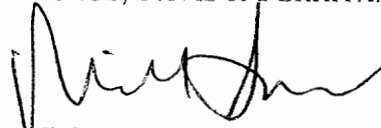
PIERCE, DAVIS & PERRITANO, LLP

September 27, 2006

Page 2 of 2

Very truly yours,

PIERCE, DAVIS & PERRITANO, LLP

A handwritten signature in black ink, appearing to read "Michael D. Leedberg". The signature is fluid and cursive, with a large initial "M" and a long, sweeping underline.

Michael D. Leedberg

cc: Dragan Ćetković, Esq.
Black, Ćetković & Whitestone
200 Berkeley St., 16th floor
Boston, MA 02116-5022

Daniel Nucci, MIIA

PIERCE, DAVIS & PERRITANO, LLP

COUNSELLORS AT LAW

TEN WINTHROP SQUARE
BOSTON, MA 02110-1257

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Terrence J. Pricher
David G. Schwartz
Adam Simms †
Gregory F. Tinsworth *
* also admitted in RI
♦ also admitted in PA
† also admitted in NY
● also admitted in CT

November 14, 2006

Carmen L. Durso, Esq.
175 Federal St., Suite 1425
Boston, MA 02110

Re: Joseph H. Koran, et al. vs. Elizabeth Weaver, et al.
USDC of MA C.A. No. 05-11454 RGS
Our File No.: 282-0403288

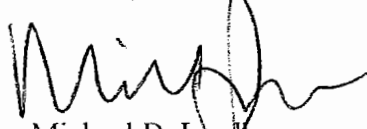
Dear Attorney Durso:

Enclosed please find a blank authorization for the release of medical records to Wegmans, who have rejected the prior authorization for failure to specifically mention HIV, mental health, and/or drug and alcohol treatment information. If you have no objection, please have Mr. Koran sign and date the authorization, and return it to our office as soon as possible.

If you have any questions, please do not hesitate to contact us.

Very truly yours,

PIERCE, DAVIS & PERRITANO, LLP



Michael D. Leedberg

MDL/rcm
Enclosure

AUTHORIZATION TO USE OR DISCLOSE PROTECTED HEALTH INFORMATION

1. I, Joseph H. Koran, hereby authorize **Wegmans** to use or disclose the following protected health information from my medical records. I understand that information used or disclosed pursuant to this authorization could be subject to **redisclosure** by the recipient and, if so, may not be subject to federal or state law protecting its confidentiality.
2. Patient Name, DOB & Address: **Joseph H. Koran, DOB 11/25/61, 6101 Twain Dr., New Market, MD 21774.**
3. Information to be disclosed to: **Pierce, Davis & Perritano, LLP, 10 Winthrop Square, Boston, MA 02110.**
4. Disclose the following information for treatment dates: **1/1/1997 to PRESENT:**

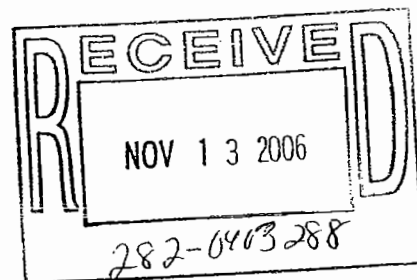
XX Complete Records	<input type="checkbox"/> Consult	<input type="checkbox"/> Physical Therapy
<input type="checkbox"/> Abstract	<input type="checkbox"/> Outpatient Reports	<input type="checkbox"/> Emergency Reports
<input type="checkbox"/> Face Sheet	<input type="checkbox"/> X-Ray	<input type="checkbox"/> HIV information
<input type="checkbox"/> Discharge Summary	<input type="checkbox"/> Laboratory	<input type="checkbox"/> Mental health info.
<input type="checkbox"/> History & Physical	<input type="checkbox"/> Pathology	<input type="checkbox"/> Alcohol/drug treatment
5. The above information is **disclosed for the following purposes:**
☐ Medical Care **XX Legal** ☐ Insurance ☐ Personal ☐ Other _____
6. **I understand I may revoke this authorization at any time by requesting such of the above-referenced hospital/physician practice in writing, unless action has already been taken in reliance upon it, or during a contestability period under applicable law.**
7. **This authorization expires upon final judgment in lawsuit in United States District Court, Boston Massachusetts captioned Koran, et al. v. Town of Sherborn, et al., docket no. 05-11454 RGS, but no earlier than June 1, 2007.**
8. **I agree that a photocopy of this authorization shall be valid as if an original.**
9. _____
Signature of Patient or Legal Representative
10. _____
Date

PRINTED NAME AND RELATIONSHIP OF PATIENT OR PATIENT'S REPRESENTATIVE

**IMPORTANT: THIS AUTHORIZATION SHALL BE DEEMED INVALID UNLESS
ALL NUMBERED ENTRIES ARE COMPLETED**

N.B. In certain situations, an additional authorization to release sensitive, legally protected information may be required

Wegmans



November 10, 2006

Pierce, Davis & Perritano, LLP
Attn: Michael D. Leedberg
Ten Winthrop Square
Boston, MA 02110-1257

Re: Joseph Koran
DOB: 11/25/1961
File#: 282-0403288
Civil Action#: 05-11454RGS

Dear Mr. Leedberg:

Wegmans Food Markets, Inc. received your request for medical information for the individual referenced above. Unfortunately, the authorization that you provided did not meet the requirements of the Health Insurance Portability and Accountability Act Privacy regulation (specifically 45 C.F.R. §164.508(c)(2)(ii) and the authorization you provided does not permit Wegmans to disclose HIV or mental health information, or information regarding alcohol or drug treatment. Unfortunately, Wegmans is unable to determine which medications may or may not have been prescribed by a doctor as a result of these conditions.) As a result, Wegmans is unable to comply with your request.

If you have any questions about this matter, please contact the undersigned.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Joyce Duffy".

Joyce M. Duffy
Administrative Assistant to
Mary McCabe, Chief Privacy Officer
585.429.3207

Wegmans Food Markets, Inc.

PIERCE, DAVIS & PERRITANO, LLP

COUNSELLORS AT LAW

Joel F. Pierce
John J. Davis *
Judith A. Perritano
John J. Cloherty III *
Daniel G. Skrip ♦

TEN WINTHROP SQUARE
BOSTON, MA 02110-1257

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David G. Schwartz
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Gregory F. Tinsworth *

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♦ also admitted in PA
† also admitted in NY
● also admitted in CT

December 12, 2006

Via fax to 617-462-7972

Carmen L. Durso, Esq.
175 Federal St., Suite 1425
Boston, MA 02110

Re: Joseph H. Koran, et al. vs. Elizabeth Weaver, et al.
USDC of MA C.A. No. 05-11454 RGS
Our File No.: 282-0403288

Dear Attorney Durso:

We have yet to receive any of the outstanding medical records or authorizations pursuant to my prior letters of 7/26/06, 8/4/06, 8/18/06, 8/21/06, 8/30/06, 9/5/06, 9/14/06, 9/26/06 (which provides the best up to date synopsis of what is outstanding), 9/27/06 and 11/14/06. Please consider this formal request for a L.R. 37.1 conference within 7 days.

We understand that discovery in this matter has been extensive and complex due to the circumstances of the case. But we cannot wait any longer for these records and authorizations. The discovery deadline has passed, and our defense expert has been thus far deprived of the opportunity to review a complete record on the case. This has and will continue to prejudice my client's right to a full and fair defense of the claims against it. Kindly see to it that this matter is given your immediate attention. If I must seek the assistance of the court, I will have no choice but to request costs in the interests of my client. I would very much like to avoid such unnecessary motion practice, and am optimistic and hopeful that we can resolve this issue on our own. Your renewed cooperation would be greatly appreciated.

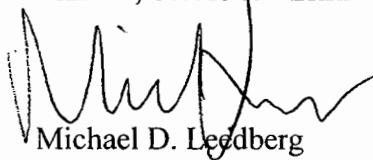
As per my telephone message last week, I am also writing to request a L.R. 7.1(A)(2) conference on a motion for summary judgment I am intent on filing. Again, we are under strict

constraints, as the motion must be filed by this month's end (the amended/extended deadline). Kindly contact me within 7 days to discuss the motion, and your client's position. I will file the motion on or around 12/19/06 if I do not hear from your office.

Thank you in advance for your anticipated attention to these urgent matters. I look forward to the courtesy of your reply.

Very truly yours,

PIERCE, DAVIS & PERRITANO, LLP

A handwritten signature in black ink, appearing to read "Michael D. Leedberg", is written over the printed name. The signature is fluid and cursive, with a prominent initial "M".

Michael D. Leedberg

*** TX REPORT ***

TRANSMISSION OK

TX/RX NO 4072
CONNECTION TEL *0403288#6174267972#
SUBADDRESS
CONNECTION ID
ST. TIME 12/12 15:04
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RESULT OK

PIERCE, DAVIS, & PERRITANO, LLP
Ten Winthrop Square
Boston, MA 02110

TELECOPY COVER SHEET

DATE: December 12, 2006

OUR FILE NO: 282-0403288

TOTAL NUMBER OF PAGES: - 3 -

(INCLUDING THIS SHEET)

PLEASE DELIVER THE FOLLOWING PAGES TO:

Name : Carmen L. Durso, Esq.

Fax : 617-426-7972

From : Pierce, Davis & Perritano, LLP

Name : Michael D. Leedberg, Esq.

Phone No. : (617) 350-0950

Facsimile No. : (617) 350-7760

Regarding : *Koran v. Weaver, et al*

Remarks : Please see attached.

PIERCE, DAVIS, & PERRITANO, LLP
Ten Winthrop Square
Boston, MA 02110

TELECOPY COVER SHEET

DATE: December 12, 2006

OUR FILE NO: 282-0403288

TOTAL NUMBER OF PAGES: - 3 -

(INCLUDING THIS SHEET)

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Name : Carmen L. Durso, Esq.

Fax : 617-426-7972

From : Pierce, Davis & Perritano, LLP

Name : Michael D. Leedberg, Esq.

Phone No. : (617) 350-0950

Facsimile No. : (617) 350-7760

Regarding : *Koran v. Weaver, et al*

Remarks : Please see attached.

NOTE: If you do not receive all the pages, please call back as soon as possible:
(617) 350-0950.

The documents included with this facsimile transmission sheet contain information from the law firm of Pierce, Davis & Perritano, LLP which is confidential and/or privileged. This information is intended to be for the use of the addressee named on this transmittal sheet. If you are not the addressee, note that any disclosure, photocopying, distribution or use of the contents of this faxed information is prohibited. If you have received this facsimile in error, please notify us by telephone (collect if you wish) immediately so that we can arrange for the retrieval of the original documents at no cost to you.